No. 05-831

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael T. Sadlowski
85 Harvard Street
Leominster, MA 01453
(978) 537-1891

Jocelyn M. Sadlowski
85 Harvard Street
Leominster, MA 01453
(978) 537-1891

QUESTIONS PRESENTED

INTRODUCTION

This petition is an appeal of an order of the U.S. Court of Appeals for the First Circuit. The petitioners were seeking a panel appeal of single judge decisions. Petitioners were seeking the panel to overturn a single judge decision where Circuit Judge Lynch denied a new hearing/rehearing and denied recall of mandate.

Plaintiffs-appellants had filed the Petition for New Hearing due to an Opinion of the United States Supreme Court of Feb., 2004. The Opinion established many points which petitioners argue are cause to overturn the U.S. Court of Appeals ruling on the search warrant matter in Sadlowskis' case. The Opinion was on the case of *Groh v Ramirez,* 02-811, 540 series, Feb., 2004, and which affirmed the Opinion of the U.S. Court of Appeals for the Ninth Circuit, *Ramirez v Butte-Solver Bow County,* July 2002.

The order of the U.S. Court of Appeals for the First Circuit results in the order to be in conflict with points made in the Opinion of the U.S. Court of Appeals for Ninth Circuit and in conflict with points made in the Opinion of the U.S. Supreme Court.

QUESTIONS

1) Do the following key points made in the Opinion of the U.S. Supreme Court (decided February, 2004) and which affirmed the Opinion of the U.S. Court of Appeals for the Ninth Circuit (decided and amended July, 2002) cause the ruling of the U.S. Court of Appeals for the First Circuit regarding the search warrant matter to be overturned?

Key points:

1) A search warrant form must be seen by the court and issued by the court;
2) During or prior to the completion of a search, and where an occupant is present, an issued and valid search warrant form or copy thereof is to be given to and left with the person whose premises is being searched;
3) The law enforcement officer serving the search warrant bears responsibility that the search warrant given to the person whose premises is being searched is the issued search warrant form or copy thereof and that it is not facially defective in an obvious way;
4) At the time of the search, a document or documents elsewhere do not save an invalid search warrant that was given to the person whose premises was searched;
5) The existence of probable cause that may have been established in an affidavit for application for search warrant does not save an invalid search warrant given to the person whose premises is being searched.

2) What time limit is there for petitioning a new hearing/rehearing after an Opinion of the U.S. Supreme Court is published in the printed U.S. Reports?

3) For petitions to the U.S. Court of Appeals for the First Circuit, is it fair to the plaintiffs-appellants to deny petitions without specificity of points being stated that truly reveal the basis for denial versus only providing general statements for such denial?

4) Does abuse of Rule 56 on Summary Judgment in a material way raise cause to overturn an order?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Plaintiffs-appellants were	Michael Sadlowski Jocelyn Sadlowski Suzanne Sadlowski
Defendant-appellee was:	Louis Benoit

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the order below.

OPINIONS BELOW

For cases from federal courts

The order denying Petition for Appeal of Single Judge Decisions appears at Appendix A.

The order of a single judge denying Petition for New Hearing appears at Appendix B.

The order of a single judge denying Petition for New Hearing *En Banc* appears at Appendix C.

The ruling by the U.S. Court of Appeals for the First Circuit in Sadlowskis' case, 02-1365 appears at Appendix D.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals for the First Circuit rendered the order on Petition for Appeal of Single Judge Decisions was August 23, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment [U.S. Constitution] – 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

Federal Rule of Civil Procedure, Rule 56 on Summary Judgment

STATEMENT OF THE CASE

On Friday afternoon, at around 2:40 P.M., on August 23, 1996, Leominster police detective Louis Benoit, led a search team and performed a search of the single family home of Michael and Jocelyn Sadlowski at 85 Harvard Street, Leominster, Massachusetts.

Detective Benoit gave a document labeled as search warrant to Jocelyn Sadlowski and to Suzanne Sadlowski to read. Detective Benoit did not leave the document or a copy at the residence. The search team ransacked the house. Michael Sadlowski returned home later in the day, around 5:00 P.M., from work and found the house a mess with chairs, sofas, beds apart or overturned, dressers with drawers removed and dumped on the floor, papers, kitchen utensils and contents of kitchen cabinets strewn over the floor, living room furniture turned over, personal effects (attaché case) of Michael Sadlowski searched and file cabinet of Michael and Jocelyn Sadlowski was opened and searched. As there was the K-9 dog to sniff for marijuana, there was no need to rummage and ransack the house. The canine dog would be able to locate whatever marijuana was present.

Michael Sadlowski viewed a search warrant several days later at the clerk's office of the Leominster District Court. After such viewing, Michael obtained a black and white copy and showed the document to Jocelyn. Jocelyn stated that the document given to her to read at the time of the search was not the search warrant form on file and not a copy of it.

In 1998, the Sadlowskis filed a civil action against Louis Benoit.

The core issue is that plaintiffs-appellants Sadlowskis state in their affidavits, depositions and testimony at the motion for

summary judgment hearing that the document labeled as search warrant that was served in hand at the Sadlowski residence on August 23, 1996 during the time of the search of the residence was not the search warrant document or copy thereof that is currently on file at the Leominster District Court. Per the affidavit of Jocelyn Sadlowski and depositions of Jocelyn Sadlowski and Suzanne Sadlowski, the search warrant served at the residence reveals a form quite different than the one on file with the court. Also, from the deposition of appellee Benoit, the exhibit of how he demonstrated he folded the search warrant reveals that the search warrant on file in the court is not the one that was served at the residence. The Sadlowskis had a private investigator examine the search warrant on file for the folds and which such action revealed the folds of the exhibit do not match the folds in the search warrant on file. Detective Benoit claims to have served in hand the original search warrant that is on file.

Hypothesis #1:

> The search warrant currently on file had NOT issued prior to the search of Sadlowskis' residence so a fabricated document (different format, etc.) labeled as search warrant was used.

The fabricated search warrant was quite different than the search warrant form currently on file. There is no affidavit from the Assistant Clerk-Magistrate Raymond Salmon Jr. stating the time of day that the search warrant was signed. The court was extremely busy on Friday August 23rd, and Assistant Clerk-Magistrate Salmon was in court for arraignments. He would not have had time to conduct a review of an application for search warrant until the end of the day after the search was completed.

Hypothesis #2:

> If a search warrant might have issued prior to the search, a fabricated search warrant (different format,

etc.) was used instead so as to conduct a general (warrantless) search.

For either situation, a violation of the Fourth Amendment results.

The situation for the Sadlowskis needs to be examined with the key points made as a result of the Opinion of the U.S. Supreme Court in the Groh v Ramirez case and the Opinion of the U.S. Court of appeals for the Ninth circuit in the Ramirez v Butte-Silver Bow County case.

Those key points are:

1) A search warrant form must be seen by the court and issued by the court;
2) During or prior to the completion of a search, and where an occupant is present, an issued and valid search warrant form or copy thereof is to be given to and left with the person whose premises is being searched;
3) The law enforcement officer serving the search warrant bears responsibility that the search warrant given to the person whose premises is being searched is the issued search warrant form or copy thereof and that it is not facially defective in an obvious way;
4) At the time of the search, a document or documents elsewhere do not save an invalid search warrant that was given to the person whose premises was searched;
5) The existence of probable cause that may have been established in an affidavit for application for search warrant does not save an invalid search warrant given to the person whose premises is being searched.

An excerpt from the Opinion in the Ramirez v Butte-Silver Bow County case: " . . . individuals must be able to read and

point to the language of a proper warrant."

The U.S. Court of Appeals for the First Circuit rendered its decision on March 31, 2003. The appeal addressed two matters: collateral estoppel and threatening. The court chose not to address the collateral estoppel matter but chose to look at the case on other grounds.

It is most disturbing that the ruling in the Sadlowskis case includes statements on information taken out of context and distorted and stating facts where no factual evidence through affidavits existed. Deciding the case on other grounds without having an oral hearing, without all discovery being available because local rules do not allow them as part of the record, without the plaintiffs-appellants being able to provide an opposition to the specific matters of other grounds, renders Rule 56 as an unjust practice. The actions in the development of the ruling and the ruling reveal an abuse of Rule 56.

A Petition for Writ of Certiorari was filed by Michael Sadlowski in September of 2003. Due to the vagueness and ambiguity of the ruling of the U.S. Court of Appeals for the First Circuit, some general questions were raised in the petition. The petition was denied. However, Michael Sadlowski believes that some of the questions were answered in a case that was scheduled to be heard at around the same time by the U.S. Supreme Court. The case was Groh v Ramirez, 02-811.

When the Sadlowskis learned of a case regarding search warrants that had been before the United States Supreme Court and a case where the Supreme Court ruled on sentencing guidelines that led to the Cianci case being reheard for sentencing, the Sadlowskis filed a Petition for New Hearing in April, 2005. Normally, a petition for new/rehearing is reviewed by a panel. The Sadlowskis' felt that the U.S. Supreme Court Opinion in Groh v Ramirez was

OVERWHELMING and the Sadlowskis would get a new hearing/rehearing. The petition was denied. The Sadlowskis then filed a Petition for New Hearing En Banc as such petition was expected to be given to members of the full court. The petition was denied. The Sadlowskis discovered that both petitions were reviewed by a single judge. The Sadlowskis then filed a Petition for Appeal of Single Judge decisions. That petition was denied on August 23, 2005.

In the petition for appeal of single judge decisions, argument was made as to the points listed earlier on why the ruling should be reversed on the search warrant matter and the following on recall/removal of mandate.

The U.S. District Court in Rhode Island, a court of the First Circuit, granted a resentencing hearing to three individuals and had hearings in June of 2005, from sentences set in Sept. 2002. This is a time of 2 years 9 months after the sentences were set. The three persons who were granted resentencing hearings were: Vincent Cianci Jr., Frank Corrente, and Richard Autiello. These individuals were allowed to have a ruling by the U.S. Supreme Court in another case applied to their case, going back over 2 and ½ years. This is of a longer time duration than Sadlowskis' request.

When the U.S. Supreme Court rules on a particular case, the court makes points in the opinion that have applicability to a wider collection of matters. In the Groh v Ramirez case, the U.S. Supreme Court ruled that a search warrant given to a person of the premises that is being searched at the time of the search and where the given search warrant failed to describe the person or things to be seized makes the search warrant invalid. Justice Stevens delivered the Opinion and within stated "The search warrant is plainly invalid".

As such, this reveals that an invalid search warrant given to the person whose premises is being searched at the time of the search is a Fourth Amendment violation and

unconstitutional. The existence of probable cause and other documents elsewhere do not save the invalid search warrant. In Sadlowskis' case, the document labeled as search warrant given to the Sadlowskis at the time of the search of their residence was never seen by the court and never issued by the court and was a different form. As such, it was grossly invalid, worst than the situation in the Groh v Ramirez case.

As nonmovants of the motion for summary judgment, per Rule 56 on Summary Judgment, the court must accept the facts provided by the Sadlowskis a presented in testimony of Jocelyn Sadlowski and Suzanne Sadlowski at the motion for summary judgment hearing, the depositions of Jocelyn Sadlowski and Suzanne Sadlowski and the affidavit of Jocelyn Sadlowski, that reveal that an invalid search warrant was served in hand at Sadlowskis' residence. As such, summary judgment must be reversed. Thus, the search conducted at the Sadlowski residence was unconstitutional and a violation of the Fourth Amendment.

The critical point is that a valid search warrant must be given to the person whose residence is being searched during the time of the search.

The U.S. Court of Appeals for the First Circuit needs to follow the lead of the U.S. Supreme Court and find that an invalid search warrant (for Sadlowskis, one never seen by the court and never issued by the court and being of different format, etc.) that is given to a person, whose premises is being searched, during the time of the search is a Fourth Amendment violation.

The Sadlowskis were baffled as to why the U.S. Court of Appeals for the First Circuit denied a new/rehearing. No specifics were mentioned. The points made in the Groh v Ramirez case clearly demonstrate that the ruling of the U.S. Court of Appeals for the First Circuit must be overturned.

REASONS FOR GRANTING THE PETITION

- Protect citizens from the unlawful intrusion of their homes by law enforcement;
- Preservation of Fourth Amendment rights;
- That a search warrant served in hand at a residence must be a valid search warrant;
- That each U.S. Court of Appeals is to honor the points made in cases by other U.S. Courts of Appeals pursuant to Rule 10 of U.S. Supreme Court Rules;
- That each U.S. Court of Appeals is to honor the points made in cases by the U.S. Supreme Court;
- Cause the lower courts to properly follow Rule 56 on Summary Judgment.

CONCLUSION

The petition for a writ of certiorari should be granted and the ruling of the U.S. Court of Appeals for the First Circuit overturned on the search warrant matter. The case should be remanded to the U.S. Court of Appeals for the First Circuit for resolution of the collateral estoppel matter of the appeal that the appeals court did not address.

Respectfully submitted,

Petitioner

Michael T. Sadlowski

Michael T. Sadlowski

Jocelyn M. Sadlowski

Jocelyn M. Sadlowski

APPENDIX A

ORDER DENYING PETITION FOR APPEAL OF SINGLE JUDGE DECISIONS

United States Court of Appeals
For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants.

v.

LOUIS BENOIT,
Defendant, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges

ORDER OF COURT

Entered: August 23, 2005

Plaintiffs-appellants have filed a petition for review of the single judge orders entered May 12, 2005, denying their "Petition for New Hearing" and June 17, 2005, denying their "Petition for New Hearing En Banc." For the reasons stated therein, this panel concurs with the decisions denying petitioners' requests for new hearings.

So ordered.

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By: _____

Chief Deputy Clerk

cc: Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX B

ORDER (BY SINGLE JUDGE) DENYING PETITION FOR NEW HEARING

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

ORDER OF COURT

Entered: May 12, 2005

Plaintiffs-appellants seek rehearing in this case, arguing that Groh v. Ramirez, et al., 540 U.S. 551 (2004), is grounds for reversal of this court's March 31, 2003 judgment. Mandate issued in this case on May 15, 2003. The United States Supreme Court denied certiorari on November 17, 2003. Because mandate has issued in this case, we no longer have jurisdiction over it. See Boston and Maine Corp. v. Town of Hampton, 7 F.3d 281, 282 (1st Cir. 1993). Moreover, "[e]ven if [an] authority to recall a mandate still exists," id., appellants have not made the requisite showing of exceptional circumstances to justify our exercise of such authority. The appellants' reliance upon Groh, a case concerning a warrant which "did not describe the items to be seized," Groh, 540 U. S. at 558, is insufficient to show that the decision challenged here was" demonstrably wrong." Boston and Maine Corp., 7 F.3d at 283.

The "Petition for New Hearing," construed as a

motion to recall mandate, is denied.

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By: _____
Chief Deputy Clerk.

Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX C

ORDER (BY SINGLE JUDGE) DENYING PETITION FOR NEW HEARING *EN BANC*

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

ORDER OF COURT

Entered: June 17, 2005

Mandate issued in this case on May 15, 2003, after appellants' original petition for rehearing and rehearing en banc were denied. The present petition is untimely and relief is unavailable for the same reasons stated in our 5/12/05 order denying petitioners' "Petition for New Hearing." The Petition for New Hearing En Banc is hereby returned to the filers and the Clerk's Office is directed not to accept any further filings under this case number as the case is closed.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

cc: Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX D

RULING OF UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ON APPEAL FROM DISTRICT COURT

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M Gorton, U.S. District Judge]

Before
Campbell and Stahl,
Senior Circuit Judges,
and Lynch, Circuit Judge.

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski on brief pro see

Douglas I. Louison, Stephen C. Pfaff and Merrick. Louison & Costello on brief for appellee.

March 31, 2003

Per Curiam. Plaintiffs-appellants Michael, Jocelyn and Suzanne Sadlowski appeal from the district court's grant of summary judgment dismissing their federal claims pursuant to 42 U.S.C. §1983, against defendant Louis Benoit and remanding their state law claims to state court. "We review a summary judgment de novo, viewing the record in the light most favorable to the nonmoving party to determine whether there exists a genuine issue of material fact." Muniz Cortes v. Intermedics, Inc., 229 F.3d 12 (1st Cir. 2000).

In their brief, appellants base their challenge to the grant of summary judgment on two alleged errors by the district court: 1) in ruling that plaintiffs' Fourth Amendment claim based on a search pursuant to an invalid warrant was precluded under the doctrine of collateral estoppel, and 2) in granting summary judgment sua sponte on the claim contained in ¶ 6 of the amended complaint (threatening manner of the search).

I. Claim That Search Pursuant to Invalid Warrant Violated Plaintiffs' Fourth Amendment Rights

The district court held that the claim that plaintiffs' Fourth Amendment rights were violated by defendant's search of their residence pursuant to an invalid warrant was precluded by a determination by the Leominster District Court, denying for "insufficient evidence" plaintiffs' application for issuance of a criminal complaint against defendant Louis Benoit, pursuant to Mass. Gen. Laws ch. 218 §§ 32 - 35A. On appeal, the Sadlowskis argue that the court erred in applying issue preclusion because 1) the issues were not identical, 2) the parties were not the same, and 3) plaintiffs did not receive a "full and fair hearing" in state court.

We need not resolve the problematic question of

whether issue preclusion applies here, because we affirm on the alternative ground that plaintiffs have failed to meet their burden of showing a genuine issue of material fact as to the claim deemed precluded. See Four Corners serv. Station, Inc. v. Mobil Oil Corp., 51 F.3d 306, 314 (1st Cir. 1995) (appellate court is free to affirm summary judgment on any ground supported by the record and fairly presented).

"Once a defendant moves for summary judgment and places in issue the question of whether the plaintiff's case is supported by sufficient evidence, the plaintiff must establish the existence of a factual controversy that is both genuine and material. To carry this burden, the plaintiff must 'affirmatively point to specific facts that demonstrate the existence of an authentic dispute.'" Melanson v. Browning-Ferris Indus., Inc., 281 F. 3d 272, 276 (1st Cir. 2002).

In opposing summary judgment, plaintiffs relied upon deposition testimony and affidavits of Jocelyn and Suzanne Sadlowski. At best, that evidence established a genuine factual controversy as to: 1) whether the warrant presented to plaintiffs at the time of the search was signed by a magistrate and had Jeffrey Sadlowski's name on it, and 2) whether it differed in format from the warrant authorizing the search of their home which was on file with the Leominster District Court. However, neither factual controversy is material to plaintiffs' Fourth Amendment claim.

The only specific facts set forth by plaintiffs in support of their claim are Jocelyn and Suzanne Sadlowski's recollections that the warrant they were shown at the time of the search (the "Served Warrant") was unsigned, did not contain Jeffrey Sadlowski's name as the occupant, and was different in format from the one they viewed several days later on file with the Leominster District Court (the "Filed Warrant"). They also rely upon evidence indicating that the Filed Warrant contained folds inconsistent with how

defendant demonstrated he would have folded the Served Warrant.

Plaintiffs testified in their depositions that the Served Warrant included a description of the items to be searched for and the place to be searched (the Sadlowskis' home) and they do not contest the adequacy of those descriptions. In their opposition to summary judgment, plaintiffs specifically denied that they were alleging that the affidavit submitted in support of the warrant application was "made-up or invalid." The record includes a copy of the application for the warrant to search the Sadlowski residence which is dated the day of the search and signed by Assistant Clerk Magistrate Raymond A. Salmon, Jr.[1] Plaintiffs have not argued that the application and affidavit in support thereof did not establish probable cause to search their home.[2]

Under these circumstances, the contested facts identified by plaintiffs, if proven, would not establish a violation of their Fourth Amendment rights. The lack of a signature on the Served Warrant would not render the search unconstitutional. See United States v. Lipford, 203 F.3d 259, 270 (4th Cir. 2000); United States v. Kelley, 140 F.3d 596, 602 n. 6 (5th Cir. 1998). The Fourth Amendment does not require that a search warrant "name the person from whom the things will be seized." Zurcher v. Stanford Daily, 436 U.S. 547, 555 (1978). Plaintiffs' contention that the defendant did not comply with Mass. Gen. Laws ch. 276, §3, prescribing the methods for issuance of a search warrant, is also insufficient to support a Fourth Amendment claim. See

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[1] The record does not include a copy of the supporting affidavit which was incorporated in the application.

[2] Plaintiffs' allegation that the affidavit in support of the search warrant was prepared after the search had been completed is entirely unsubstantiated.

White v. Olig, 56 F.3d 817, 820 (7th Cir. 1995). We conclude that there is no trialworthy issue as to this Fourth Amendment claim and, therefore, summary judgment was appropriate.

II. Dismissal of Claim that Officer's Threatening Manner Amounted to Constitutional Violation

Appellants challenge the grant of summary judgment on the claim that the "threatening manner" in which defendant conducted the search of Suzanne Sadlowski's bedroom violated her constitutional rights. Even assuming that defendant's summary judgment motion did not encompass this claim, "[i]t is apodictic that trial courts have the power to grant summary judgment sua sponte." Rogan v. Menino, 175 F.3d 75, 79 (1st Cir. 1999). Two conditions precedent must be satisfied before a trial court may enter summary judgment sua sponte: "(1) the case must be sufficiently advanced in terms of pretrial discovery for the summary judgment target to know what evidence likely can be mustered, and (2) the target must have received appropriate notice." Id. The ten-day notice requirement of Rule 56 applies to *sua sponte* grants of summary judgment. Id. at 80. "In the context of a *sua sponte* summary judgment, 'notice' means that the targeted party 'had reason to believe the court might reach the issue and received a fair opportunity to put its best foot forward.'" Leyva v. On the Beach, Inc., 171 F.3d 717, 720 (1st Cir. 1999) (citation omitted).

Here, both conditions precedent were satisfied. Discovery had been underway for more than a year when defendant moved for summary judgment. The plaintiffs were given notice as of the date of the magistrate judge's Report

and Recommendation (February 15, 2002) that the court was considering entering summary judgment as to the "threatening manner" claim. In their opposition to the Report, plaintiffs could have argued that there were disputed facts concerning that claim. Instead, they merely pointed out that defendant had not moved for summary judgment as to that specific claim. Summary judgment entered on March 1, 2002, more than ten days after plaintiffs had received notice. Therefore, the district court did not err in sua sponte entering summary judgment as to the claim contained in paragraph 6 of the amended complaint.[3]

Affirmed.

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[3] On the merits, appellants do not dispute the district court's ruling that their allegations "do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably." Instead, they argue only that defendant's conduct violated Mass. Gen. Laws ch. 12, §11i. "By the terms of the statute itself, a section 1983 claim must be based upon a *federal* right." Ahern v. O'Donnell, 109 F.3d 809, 815 (1st Cir. 1997).

APPENDIX E

AFFIDAVIT OF JOCELYN SADLOWSKI

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No: 98-40194

Michael Sadlowski	]	
Jocelyn Sadlowski	]	
Suzanne Sadlowski	]	
Plaintiffs	]	AFFIDAVIT OF
	]	JOCELYN
v	]	SADLOWSKI
	]	
Louis Benoit	]	
.Leominster Police Detective	]	
Defendant	]	
	]	

The document labeled search warrant that was shown at the 85 Harvard Street residence on August 23, 1996, had striking differences versus search warrant 9661SW-29 that is in the Leominster District Court Clerk's Office, like:

- the words "SEARCH WARRANT" were centered and in orange color,
- the section for the items to be searched for was in blue color;
- the form lettering was in black, (the form lettering on search warrant 9661SW-29 is in brown color),
- the name of Jeffrey Sadlowski was not on it,
- it did not have any signatures,
- the format was quite different

Signed under the pains and penalties of perjury, this 9th day of October in the year 2001.

Plaintiff pro se,

"s/Jocelyn Sadlowski"

Jocelyn Sadlowski
85 Harvard Street
Leominster, MA 01453
(978) 537-1891

(2) Supreme Court, U.S.
FILED

No. 05-831 NOV 18 2005

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX

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APPENDIX F

REPORT AND RECOMMENDATION BY MAGISTRATE JUDGE CHARLES SWARTWOOD III ON DEFENDANT BENOIT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL SADLOWSKI, JOCELYN SADLOWSKI and SUZANNE SADLOWSKI, Plaintiffs,	)	CIVIL ACTION NO. 98-40194-NMG
vs.	)	
LOUIS BENOIT, Defendant,	)	

REPORT AND RECOMMENDATION
February 15, 2002

SWARTWOOD, M.J.

Nature of the Proceeding

This matter was referred to me by Order of Reference dated August 3, 2001, for Findings and Recommendations pursuant to 28 U.S.C. §636(b) (1) (B) on Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122).

Nature of the Case

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski, proceeding *pro se,* have filed an Amended Complaint (Docket No. 35) asserting claims against Sergeant Louis Benoit of the Leominster Police Department. Construing the Amended Complaint liberally, as I am

required to do, see Ashmond v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997), I find that the Plaintiffs are attempting to assert: federal claims against Sergeant Benoit for violation of the civil rights act, 42 U.S.C. § 1983, as a result of the alleged unlawful search of their residence and/or personal property, the resultant alleged unlawful arrest of Suzanne Sadlowski for possession of a controlled substance found during the search, and the alleged violation of Suzanne Sadlowski's constitutional rights by intimidating her during the search and failing to Mirandize her in connection with her arrest; and corresponding state civil rights claims and state law tort claims for intentional infliction of emotional distress; negligent infliction of emotional distress; invasion of privacy; and defamation (Suzanne Sadlowski).

Findings of Fact

1. On August 23, 1996, Sergeant Benoit executed a search warrant at 85 Harvard, Street Leominster, Massachusetts, where the Plaintiffs reside. Def., Benoit's Mem. of L. in Sup. of His Mot. for Sum. J. (Docket No. 123) ("Def's Mem."), Ex. B (Affidavit of Louis Benoit) ("Benoit Aff."), at ¶2. The search warrant was issued to Detective Siciliano of the Leominster Police department that same day. Pls' Amended Opp. To Def. Benoit's Mot. For Sum. J. (Docket No. 141) ("Pls' Opp."), at Ex. K.

2. At the time Sgt. Benoit executed the warrant he showed it to the persons on the premises, Jocelyn Sadlowski, Jeffrey Sadlowski and Suzanne Sadlowski. Benoit Aff., at ¶3.

3. After the search was completed, Detective Siciliano of the Leominster Police Department filled in the back of the search warrant indicating what items were seized, when the execution of the warrant took place and the time the warrant was executed. Id., at ¶4.

4. Detectives Siciliano and Plume both signed off on

the search warrant. Id., at ¶¶4, 5. Detective Siciliano then filed the warrant with the office of the clerk magistrate in the Leominster District Court. Id., at ¶5. The warrant filed in the Leominster District Court was assigned Docket No. 9661SW-29 ("Search Warrant"). See Pls' Opp., at Ex. O.

5. On February 20, 2001, Sergeant Benoit viewed the Search Warrant and determined that it was the same search warrant that he executed at the Sadlowski's residence on August 23, 1996. Benoit Aff., at ¶6.

6. Jocelyn Sadlowski and Suzanne Sadlowski have testified that they both saw the search warrant which Sgt. Benoit and other members of the Leominster Police Department executed at their residence. Both testified that the document that they were shown by Sgt. Benoit at that time of the search had the words "search warrant" centered at the top in orange letters. Pls' Opp., Ex B (Deposition of Jocelyn Sadlowski) (" J. Sadlowski Dep."), at p. 30-31; Ex. C (Deposition of Suzanne C. Sadlowski) ("S. Sadlowski Dep."), at p. 23. Both Jocelyn Sadlowski and Suzanne Sadlowski recalled that there was typewritten information in black ink on the document shown to them and Mrs. Sadlowski recalled some handwritten information in blue ink. Mrs. Sadlowski does not recall any signatures on the document shown to her or any boxes with check marks. Neither Mrs. Sadlowski nor Suzanne Sadlowski could recall the substance of the contents of the document shown to them, except that Mrs. Sadlowski testified that the document contained a description of what the police were looking for and Suzanne Sadlowski recalls seeing the word "marijuana". J. Sadlowski Dep., at pp. 31-33; S. Sadlowski Dep, at pp. 24 – 25.[1]

[1]In support of their contention that the search warrant executed by Sgt. Benoit on August 23, 1996 is not the same warrant that is on file at the Leominster District Court, the Plaintiffs have cited the affidavits of Jocelyn Sadlowski and Suzanne Sadlowski [(Docket Nos. 36 and 37) and Pls' Mem., Exs. D and E]. However, those affidavits are unsworn, that

7. The Search Warrant has the words "search warrant" off-center at the top in brownish letters, includes typewritten and handwritten information and is signed by Raymond Salmon Jr., as Assistant Clerk-Magistrate, and purports to be signed by the First Administrative Justice, "J.J. Curran Jr."[2] Pls' Mem., Ex. O (Copy of Search Warrant).

8. First Justice John Curran, Jr. of the Leominster District Court did not sign the Search Warrant, nor did he review it before it was issued. Pls' Opp., at Ex. N. However, it is common practice in the Leominster District Court to preprint or stamp the name of the presiding judge on search warrants, as a formality. Id.

9. The folds of the Search Warrant do not appear to match the folds in a paper made by Sgt. Benoit at his deposition when he was asked to fold such paper as he would have the search warrant executed at the Sadlowskis' residence on August 23, 1996. Id., Exs. R&S.

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is, they are not signed under the pains and penalties of perjury. Therefore, they cannot be considered for purposes of determining whether there is a genuine issue of material fact. Furthermore, Plaintiff, Michael Sadlowski, has filed an unsworn affidavit in support of the Plaintiffs' motion for summary judgment. Pls' Mem., Ex. G. For this same reason, that affidavit will not be considered. Carmona v. Toledo 215 F.3d 124 (1st Cir. 2000) (to be admissible at summary judgment stage, document must be sworn or certified).

[2]In support of their claim that the warrant is invalid, Plaintiffs assert that the Assistant Clerk-Magistrate's name, which is spelled out under his signature, is misspelled as "Salmun". Therefore, Plaintiffs argue, someone other than Mr. Salmon must have signed the document. This argument is specious. I have reviewed the document and disagree with the Plaintiffs' conclusion that the last name of the Assistant Clerk-Magistrate is spelled out "Salmun". On the contrary, comparing how the last name of the Assistant Clerk-Magistrate is spelled out to how his first name, Raymond (which also contains an "o"), is spelled out, it appears that the last name is correctly spelled as "Salmon", that is, what Plaintiffs have alleged to be a "u" in the last name is an "o".

10. When executing the warrant, Sgt. Benoit told Suzanne Sadlowski that he would tear her room apart. Amended Complaint, at ¶6. Sgt. Benoit dumped out Suzanne Sadlowski's cosmetics in front of her in her bedroom. Id., at ¶7.

11. The living room and kitchen of the Sadlowski residence were thoroughly searched, as was the bedroom and bedroom closet of Michael and Jocelyn Sadlowski. The house was a mess when Michael Sadlowski returned home from work on August 23, 1996. Id., at ¶¶8, 14.

12. Upon completing the search, the police arrested both Suzanne Sadlowski and Jeffrey Sadlowski. Suzanne Sadlowski, who at the time was a minor, was arrested for possession of marijuana after Jeffrey Sadlowski indicated that some marijuana found by the police belonged to her. Pl's Opp., Ex. V, at p. 30. Suzanne Sadlowski was not read her Miranda rights at the time of her arrest. Amended Complaint, at ¶12. Jeffrey Sadlowski pled guilty to possession of a Class D Substance with Intent to Distribute. Def's Mem., Ex. D. Suzanne Sadlowski's case was continued without a finding with no plea pursuant to Mass.Gen.L. ch. 276, §87. Pl's Opp., at Ex. J.

13. Michael Sadlowski and Jocelyn Sadlowski subsequently applied to the Leominster District Court for the issuance of a criminal complaint against Sgt. Benoit and others. Mr. and Mrs. Sadlowski sought a criminal complaint against Sgt. Benoit on the grounds that Sgt. Benoit had served an "invalid, non-official search warrant" for their residence and that he provided false information in the affidavit in support of the warrant. Jocelyn and Michael Sadlowski also filed a motion to have the search warrant declared invalid. Def's Mem., at Exs. C-1 and C-2. The Sadlowskis' applications for the issuance of criminal complaints against Sgt. Benoit and others were denied by the

Clerk Magistrate. Id., Ex. C-3. Justice Kilmartin of the Leominster District Court reviewed the Clerk Magistrate's denial of Mr. and Mrs. Sadlowski's applications for criminal complaints against Sgt. Benoit and others. After a hearing, in which Justice Kilmartin "heard all matters related to [the Sadlowskis'] requests for the issuance of process against various individuals and motions for specific relief", the Sadlowskis' applications for criminal complaints and their pending motions were denied. Id., at Ex. C-5. In refusing to overturn the Clerk Magistrate's decision, Justice Kilmartin agreed with the Clerk Magistrate's determination that there was insufficient evidence to support the issuance of a complaint against Sgt. Benoit. Id., at Ex. C-1.

Discussion
Plaintiffs' Federal Claims
Plaintiffs Section 1983 Claims For Invasion Of Privacy/Illegal Search

The Plaintiffs have not asserted any credible arguments that the Search Warrant is invalid.[3] Instead, the Plaintiffs argue that the document on file at the Leominster District Court is not the search warrant which Sgt. Benoit executed at their residence on August 23, 1996. Sgt. Benoit argues first, that there is no genuine issue of material fact that the document which is on file at the Leominster District Court is valid and is the search warrant executed at the

[3]The Plaintiffs assert that the search warrant on file at the Leominster district is invalid because although the signature of First Justice Curran appears on the document, he never personally signed it and because the Assistant Magistrate- Clerk's name is misspelled. I have previously addressed the latter argument. See note 2, *supra*. As to the former argument, Plaintiffs' own evidence establishes that search warrant's issued in the Leominster District Court are signed under First Justice Curran's name as a matter of formality and that doing so is not improper. See Pls' Opp., at Ex. N.

Sadlowski residence on August 23, 1996. Sgt. Benoit then argues that the Plaintiffs' Section 1983 claims against him for violation of their constitutional rights as the result of his search of their residence/personal property with an alleged invalid warrant are barred by principles of res judicata and/or collateral estoppel as the result of the state court proceedings against him initiated by Mr. and Mrs. Sadlowski. Initially, I will address Sgt. Benoit's argument that Plaintiffs claims are barred by principles of res judicata and/or collateral estoppel.

"Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgement, that decision may preclude a relitigation of the issue in a suit on a different cause of action involving a party to the first case... res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 415 (1980) (internal citations omitted). Furthermore, the rules of collateral estoppel apply to actions brought under Section 1983 and encompass civil or criminal matters determined in state courts. Id., at 105, 101 S.Ct. at 420. Where a party argues that a state court decision must be given preclusive effect in a subsequent federal action, state law determines whether principles of collateral estoppel bar the subsequent federal claim. Bilida v. McCleod, 211 F.3d 166, 170 (1st Cir. 2000).

Under Massachusetts law, "collateral estoppel precludes relitigation of issues determined in prior actions between the parties or those in privity with the parties. Issues precluded under this doctrine must have been actually litigated in the first action and determined by a 'final judgment on the merits'". Sena v. Commonwealth, 417 Mass. 250, 260 (1994). A "final judgment" is one that has been

appealed or as to which an "avenue for review" was available. Id. Initially, I will address whether collateral estoppel bars Mr. and Mrs. Sadlowski's Section 1983 claim against Sgt. Benoit. If I find that it does, I will then address whether privity existed between Mr. and Mrs. Sadlowski and Suzanne such that her claims are also barred.

In this case, subsequent to the search of their residence, Mr. and Mrs. Sadlowski filed an application for a criminal complaint against Sgt. Benoit, pursuant to Mass.Gen.L. ch 218, §32, 33 and 35 (see also Mass.Dist./Munic.Ct.R. 2 (b)), on the grounds that his alleged search of their residence pursuant to an invalid or non-official search warrant was illegal. The Sadlowskis also asserted that Sgt. Benoit had provided false information in the affidavit submitted in support of the issuance of a warrant for the search of their residence. Mr. and Mrs. Sadlowski had a hearing before a Clerk Magistrate who denied their application for a criminal complaint against Sgt. Benoit for insufficient evidence. The Clerk Magistrate's decision was reviewed by Justice Kilmartin, who after a full hearing, denied the Sadlowskis' request for issuance of criminal process against Sgt. Benoit and others and denied the Sadlowskis' motions for specific relief. Justice Kilmartin made his rulings on the ground that Mr. and Mrs. Sadlowski had presented insufficient evidence to warrant the issuance of a complaint against Sgt. Benoit. Clearly, the issues concerning the validity of the warrant raised by the Plaintiffs in their Section 1983 claim were necessarily addressed in the proceeding before Justice Kilmartin. That is, in denying Mr. and Mrs. Sadlowski's application for criminal complaint against Sgt. Benoit, Justice Kilmartin necessarily rejected their assertion that the Search Warrant was invalid and/or was not the one in the possession of Sgt. Benoit at the time of the search. The standard of proof in that proceeding, "probable cause", is virtually the same as the standard of proof which applies in this case, i.e., preponderance of the evidence. The issue now becomes whether there was a "final

judgment on the merits", that is, whether Mr. and Mrs. Sadlowski had a right to appeal the denial of their application for a criminal complaint against Sgt. Benoit.

Generally, a private citizen whose application for criminal complaint has been denied has no statutory or constitutional right to challenge the denial of such application. See Manning v. Municipal Court of Roxbury, 372 Mass. 315, 317 (1977). However, the Massachusetts Supreme Judicial Court ("SJC") has recognized that the Massachusetts District Court Department has provided a right of appeal to a complainant dissatisfied with a clerk's denial of his/her application for criminal complaint. Bradford v. Knights, 427 Mass. 748 (1998) (citing District Court Standard of Judicial Practice 3:21); see also Commonwealth v. Clerk of The Boston Div. of the Juvenile Court Dep't., 432 Mass. 693 (2000). In this case, Mr. and Mrs. Sadlowski appealed the Clerk Magistrate's denial of their application for the issuance of a criminal complaint against Sgt. Benoit and were provided a full hearing by the District Court Judge[4]. Under these circumstances, I find that the SJC would find that the "final judgment" prong of the collateral estoppel test has been met.[5] I will now address whether collateral estoppel

[4]In his written Memorandum of Decision, Justice Kilmartin states that "all parties were given full opportunity to present: [a] such oral testimony as the parties chose to introduce; [b] such exhibits as the parties chose to introduce; and [c] oral argument". Def's Mem., at Ex. C-5. Justice Kilmartin even permitted limited cross-examination of the witnesses. Id.

[5]Plaintiffs assert that Defendants have failed to establish that the validity of the search warrant was determined by Justice Kilmartin because Mr. Sadlowski remembers that at the hearing, Justice Kilmartin stated that he was not ruling on the motion to have the search warrant declared invalid (see Def's Mem., at Ex. C-2). Facts averred by a party

bars Suzanne Sadlowski's Section 1983 claim against Sgt. Benoit based on the alleged illegal search of the Sadlowski residence.

Collateral estoppel bars persons party to a litigation or those in privity with them from relitigating in a subsequent litigation issues decided in the prior litigation. Privity exists where the party to a litigation either substantially controlled or was virtually represented in the prior litigation. Gonzalez v. Banco Central Corp., 27 F.3d 751 (1st Cir. 1994). Determining whether a party was "virtually represented" in a prior litigation such that privity can be said to exist requires a balancing of the equities in which the court should consider, among other factors: whether there was an identity of interests between the non-party and the party to the prior litigation; the non-party's actual or constructive notice of the prior litigation; the adequacy of the representation afforded the party to the prior litigation; and the relationship between the non-party/party. Id., at 761-762.

Mr. and Mrs. Sadlowski filed the application for criminal process against Sgt. Benoit in the Leominster District Court on February 14, 1997. See Defs. Mem., at Ex. C-1. At that time, Suzanne Sadlowski was sixteen years old, that is, she was a minor. The Sadlowskis' application for a criminal complaint alleged that Sgt. Benoit conducted an illegal search of their residence, where Suzanne Sadlowski, their daughter, also resided. Suzanne Sadlowski's interests with regard to the legality of the search conducted by Sgt. Benoit are identical to those of her parents and it is

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in an unsworn memorandum will not be considered by this Court. Nonetheless, because I find that Justice Kilmartin must have considered and rejected the Plaintiffs' arguments concerning the validity of the warrant in denying Mr. and Mrs. Sadlowski's application for the issuance of a criminal application against Sgt. Benoit, for purposes of this Report and Recommendation, it is not necessary for me to consider whether Justice Kilmartin ruled on the motion to invalidate the search warrant.

inconceivable that Suzanne Sadlowski was not aware that her parents were pursuing an application for a criminal complaint against Sgt. Benoit. Obviously, the relationship of parents and child is a close one. This is particularly true in the case of a minor child as reflected by the fact that the parents generally represent the interests of such child in court proceedings. As I have previously stated, Mr. and Mrs. Sadlowski were permitted to appeal the Clerk Magistrate's denial of their application for criminal complaint against Sgt. Benoit and were given a full hearing by Justice Kilmartin. Mr. and Mrs. Sadlowski represented themselves in connection with their application for a criminal complaint against Sgt. Benoit. While Mr. and Mrs. Sadlowski are not lawyers, they have exhibited an extensive knowledge of court rules and procedures. I am confident that they adequately represented themselves in the District Court proceedings. Under these circumstances, after balancing the equities, I find that Mr. and Mrs. Sadlowski were in privity with Suzanne Sadlowski. Therefore, principles of collateral estoppel bar Suzanne Sadlowski's Section 1983 illegal search claim against Sgt. Benoit.

Since I have determined that the Plaintiffs' Section 1983 claim against Sgt. Benoit for an alleged illegal search of their residence is barred by principles of collateral estoppel, it is not necessary for me to address Sgt. Benoit's argument that he is entitled to summary judgment on the grounds that the Plaintiffs' have failed to establish a genuine issue of material fact with respect to this claim.

Suzanne Sadlowski's Section 1983 Claim For Failure To Mirandize; False Arrest; and Intimidation

Suzanne Sadlowski has alleged a Section 1983 claim against Benoit for violation of her Fifth Amendment rights as a result of his failure to mirandize her when he arrested her subsequent to the search of the Sadlowski residence. However, a Miranda violation, in and of itself, does not give

rise to a constitutional claim under Section 1983. Veilleux v. Pershau, 101 F.3d 1, 2 (lst Cir. 1996). This is because Miranda warnings are deemed to be a procedural safeguard rather than a right explicitly guaranteed by the Fifth Amendment. Neighbour v. Covert, 68 F.3d 1508, 1510 (2d Cir. 1995); see Miranda v. Arizona, 384 U.S. 436, 467 (1966). The sole remedy for a Miranda violation is the exclusion from evidence of any self-incriminating statements made by the accused. An accused who has not been advised of his Miranda rights cannot bring a suit for damages under Section 1983. Neighbour, 68 F.3d at 1510-11; Lucero v. Gunter, 17 F.3d 1347, 1350-1 (10th Cir. 1994).

Suzanne alleges that since the search of the Sadlowski residence was illegal, her arrest was tainted thereby and illegal. Since I have found that Suzanne Sadlowski is collaterally barred from challenging the legality of the search, her false arrest claim necessarily fails. Furthermore, Ms. Sadlowski's false arrest claim fails independently of the validity of the search. The charges against Ms. Sadlowski were continued without a finding pursuant to Mass.Gen.L.ch. 276, §87, which provides for pre-trial diversion of juvenile cases. Prior to entering a plea, the individual is placed on probation for a period of time. Id. While such disposition may not technically constitute a conviction, under the Supreme Court's ruling in Heck v. Humphery, 512 U.S. 477, 489 (1994) which bars Section 1983 claims for false arrest unless the criminal proceedings *were terminated in the plaintiff's favor,* it prevents Ms. Sadlowski form bringing a subsequent Section 1983 claim for false arrest. See Nuno v. County of San Bernardino, 58 F.Supp.2d 1127, 1135-7 (C.D. Cal. 1999) (defendant pled nolo contendre to obstruction of a peace officer was barred by Heck from raising a Section 1983 claim against officer for use of excessive force).

Ms. Sadlowski asserts that Sgt. Benoit violated her rights under Mass.Gen.L. Ch. 12, §11H by threatening to tear her room apart during the search.[6] To the extent that

Suzanne Sadlowski is asserting a Section 1983 claim against Sgt. Benoit for threatening to tear up her room and dumping her cosmetic bag in front of her, in order to establish that Sgt. Benoit's actions violated her constitutional rights, Ms. Sadlowski must establish that Sgt. Benoit conducted the search in an objectively unreasonable manner. See Aponte Matos v. Toledo Davila, 135 F.3d 182, 191 (1st Cir. 1998); Martin v. Rodriquez, 154 F.Supp.2d 306, 314 (D.Conn. 2001). Quite frankly, while Ms. Sadlowski may have been offended by Sgt. Benoit's manner, her allegations do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably.

For the reasons set forth above, I recommend that summary judgment enter for Sgt. Benoit on the Plaintiffs' Section 1983 claims.

Plaintiffs' State Law Claims

Sgt. Benoit argues that he is entitled to summary judgment as a matter of law on substantially all of the state law claims asserted by the Plaintiffs. Plaintiffs originally filed this action in state court. The action was removed to this Court by Sgt. Benoit on the grounds that this Court had jurisdiction over Plaintiffs' Section 1983 claims. I have recommended that summary judgment enter for Sgt. Benoit on Plaintiffs' Section 1983 claims. I further recommend that this Court refuse to exercise pendent jurisdiction over Plaintiffs' remaining state law claims and therefore, that this

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[6]The Massachusetts Civil Rights Act, Mass.Gen.L. Ch. 12, §11H prohibits an individual from interfering with the rights of another by means of threats, intimidation or coercion. Section 1983 does not require that the violation of a person's rights have occurred by means of threats, intimidation or coercion.

action be remanded to state court for further proceedings.

Conclusion

I recommend that:

1. Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122) be allowed as to Plaintiffs' federal claims and that Plaintiffs' state law claims be remanded to state court.

Notice to the Parties

The parties are advised that under the provisions of Rule 3(b) of the Rules for the United States Magistrates in the United States District Court for the District of Massachusetts, any party who objects to these proposed findings and recommendations must file a written objection thereto with the Clerk of this Court WITHIN 10 DAYS of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis of such objection. The parties are further advised that the United States Court of Appeals for this Circuit has indicated that failure to comply with this rule shall preclude further appellate review by the Court of Appeals of the District Court's order entered pursuant to this Report and Recommendation. See United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Scott v. Schweiker, 702 F.2d 13,14 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-379 (1st Cir. 1982); Park Motor Mart,Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). See also, Thomas v. Arn, 474 U. S. 140, 106 S. Ct. 466.

"s/Charles B. Swartwood III"

CHARLES B. SWARTWOOD, III
MAGISTRATE JUDGE

APPENDIX G

ORDER BY DISTRICT COURT JUDGE NATHANIEL GORTON ADOPTING REPORT AND RECOMMENDATION

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Sadlowski,
Plaintiff(s)

V.

Benoit, et al.,
Defendant(s),

CIVIL ACTION
NO. 98-40194-NMG

GORTON, D. J.

ORDER FOR REMAND

In accordance with the Court accepting and adopting the Report and Recommendation of Magistrate Judge Swartwood dated 3/1/02, allowing the defendant's motion for summary judgment as to the plaintiff's federal claims and that plaintiff's state law claims be remanded to state court it is hereby ORDERED that the above-entitled action be and hereby is REMANDED to Worcester Superior Court for further proceedings.

By the Court

DATED: March 4, 2002

"s/M.S. Castles"

Deputy Clerk

APPENDIX H

EXCERPT FROM MASSACHUSETTS SUPREME JUDICIAL COURT IN CASE OF *MANNING V MUNICIPAL COURT OF ROXBURY DISTRICT*, 372 MASS 315, 317 (1977)

EXCERPT: "The plaintiff has not been denied his right to bring a civil action against . . ."

(Magistrate Judge Charles Swartwood III made reference to *Manning v Municipal Court of Roxbury District* case in the summary judgment in his ruling against the Sadlowskis. He disregarded that portion of the Massachusetts SJC ruling that was favorable to the Sadlowskis and which revealed that collateral estoppel did not apply to Sadlowskis' case.)

(3)

No. _____

05-831

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI, 05-831

Michael T. Sadlowski
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Jocelyn M. Sadlowski
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Petitioners Michael Sadlowski and Jocelyn Sadlowski petition the justices of the United States Supreme Court to rehear our Petition for Writ of Certiorari, 05-831.

It is Sadlowskis contention that probable cause justifying the specific search must be established prior to a search warrant issuing and no legal search can be performed until a search warrant has been issued by the court and such issued search warrant shown to the persons at the residence being searched during the time of the search.

For a police detective to use a manufactured search warrant that was radically different than the one that appeared on file at some unknown point in time, and where such manufactured search warrant was broad based, bearing no authorizations, never seen by the court, never issued by the court and never returned to the court is a gross violation of the law and of the Fourth Amendment rights of the Sadlowskis.

The "real" proof that a search warrant has issued is that the issued search warrant is shown to the person or persons at the residence during the time of the search of the residence.

The Sadlowskis were of the opinion that they presented enough detail to gain a ruling in their favor. Evidently, the court wants a greater depth of details.

The search warrant on file at the Leominster District Court is on the official state form of Massachusetts. The official search warrant form is of a heavier weight bond paper, around 30-40 lb. weight, with brown typeface.

In Massachusetts, a search warrant must be served in hand and bearing authorization. Otherwise, the search is unreasonable. This was established by the Massachusetts Supreme Judicial Court in the case of *Commonwealth v Guaba*, 417 Mass (1994).

Grounds will be presented herein that summarize previous information and reveal additional grounds.

Jocelyn Sadlowski in her affidavit and deposition described key points that reveal that the search warrant on file was not the one served at our 85 Harvard Street residence and nor was it a copy. The one given to Jocelyn Sadlowski at the residence was substantially different in many ways and had no authorizations. See affidavit of Jocelyn Sadlowski in Petition for Writ of Certiorari, 05-831.

Suzanne Sadlowski in her deposition revealed that the search warrant given to her for examination at the residence by Detective Louis Benoit was substantially different than the one on file. As she was a high school student who had typing class, she had a keen awareness of paper. She noticed that the paper of the search warrant given to her at the residence was flimsy, like typing paper. The weight of typing paper used in schools in 1996 was 16 lb. weight or lighter.

On the matter of who else saw what was shown at the residence, from the transcript of deposition of Louis Benoit, of April 6, 2000, page 38-39:

Q. Did any of the search team members see the search warrant while at 85 Harvard Street residence, the search warrant that you served there?

A. I don't know what they saw. I was busy doing a job at that time and I expect they were busy doing a job making sure the house was secure while I was doing my job with the search warrant.

During the deposition of Detective Benoit, he revealed in an exhibit how he folded the search warrant that he stated he carried to the residence. This exhibit was marked by the stenographer as Exhibit No. 1. Michael Sadlowski offered Exhibit No. 1 to the court but Magistrate Judge Swartwood III refused it.

Michael Sadlowski hired a private investigator to go to the Leominster District Court and view the search warrant on file and mark up a copy to show where the folds are in it. The folds in the exhibit created by Detective Benoit are different than the folds in the search warrant on file.

The above facts reveal that the search warrant document shown at the residence was not the one on file at Leominster District Court. Evidently, these facts were not enough to convince the justices. So let us proceed to some additional grounds.

Detective Louis Benoit claimed in his deposition that he served the original search warrant on file at the Sadlowski residence. The search warrant on file was applied for by Detective Joseph Siciliano, Jr. and Detective Siciliano created the affidavit for it. Detective Benoit led the search team.

During the case at the U.S. District Court, the Sadlowskis had filed an Emergency Motion for Clarification of Confusion Created at Hearing on Defendant Benoit's Motion for Summary Judgment, #146 of the record. The motion was denied and so the Sadlowskis were denied access to information important to the case. One of the matters was that attorney Stephen Pfaff, counsel for Louis Benoit, had made a statement at the oral hearing that Louis Benoit showed a search warrant document different than the one on file at Leominster District Court. Sadlowskis wanted to get clarification on what Benoit showed but the Sadlowskis were denied an opportunity as the Emergency Motion was denied. The transcript of the oral hearing on the Motion for Summary Judgment will reveal that attorney Pfaff made the statement.

Detective Siciliano Jr. in a drug case at trial testified that he found drugs on defendant Almonte.. The attorney for the defendant stated to the jury that Detective Siciliano "planted"

the evidence. The defendant was acquitted. This case was written up in the Sentinel & Enterprise newspaper, dated August 14, 2004. See article, shown on pages 7-9.

The U.S. Court of Appeals for the First Circuit twisted information around to serve its purpose to dismiss the Sadlowski appeal.

In Sadlowskis amended opposition, the Sadlowskis were addressing information that was in defendant Benoit's Memorandum of Law in Support of Motion for Summary Judgment.

The following section is from Sadlowskis amended opposition, (#141 of record)

> "In the last paragraph, defendant Benoit makes a statement that the plaintiffs mention that the affidavit being made up or invalid. This is incorrect. The plaintiffs pleadings make reference to the document labeled as search warrant shown at the Sadlowski residence was made-up, unauthorized."

The following section is from the U.S. Court of Appeals for the First Circuit Opinion, 02-1365:

> "In their opposition to summary judgment, plaintiffs specifically denied that they were alleging that the affidavit submitted in support of the warrant application was "made-up or invalid.""

The information from Sadlowskis' opposition was twisted around by the court. There are major issues with the affidavit for application for search warrant. The Sadlowskis had not addressed the affidavit in their pleadings as they did not believe that it needed to be addressed. The focus was on the illegal, manufactured search warrant of different form and content, unauthorized and never seen, never issued and never returned to the court that was used by detective Benoit. Sadlowskis have alleged in their case that the affidavit was

completed after the search was performed. The police came to the Sadlowski residence with a phony search warrant to see what they could find. There was no probable cause for the police to have searched the Sadlowski residence by rummaging through Sadlowskis' personal effects, papers, kitchen, living room, bedrooms and cellar. If the search warrant had issued, it would have been shown at the residence. The search warrant on file, 9661SW-29 that is on file at the Leominster District Court was not shown at the Sadlowski residence.

During discovery, key discovery requests were denied.

The affidavit for application for search warrant was created on a computer system. Therefore, the computer file would have date information of the last revision of the computer file. Sadlowskis filed a Motion to Have Software Consultant access the police system to locate the computer files of the affidavit for application for search warrant and print out the file and mark the following information on the printout – date of last revision (independent software consultant never allowed by the court).

Lieutenant Michele Pellechia of the Leominster Police Department stated in his deposition of March 15, 2000, that the computer files were saved on the computer system. The computer files of particular interest were the Year end 1996 files. Lieutenant Pellechia was the administrative officer who had responsibility for management of the computer system operations.

From transcript of deposition of Lieutenant Pellechia, page 19:

Q. So what would happen after you created the yearly tape for 1996?
A. Uh-huh.
Q. What would happen? Would that get - -
A. That would be archived.

Q. That would be archived?
A. That's correct.
Q. Where would it be archived?
A. We have a vault.
Q. In the Leominster Police Department?
A. Yes.

Then, at the evidentiary hearing, it was identified that the particular files of the affidavit were not saved. It was identified that only two years of data was kept and 1996 year end files were no longer there. Sadlowski pointed out the statement of the deposition by Lieutenant Pellechia. Magistrate Judge Swartwood III just said it was a mistake by Lieutenant Pellechia.

In the deposition of Lieutenant Pellechia, it was learned that the police department had the tools available to manufacture a search warrant. The detectives had a personal computer with word processing software, a scanner and color printer. Manufacturing a search warrant with the words "Search Warrant" in large orange letters and the rest in black lettering would be quite easy. Color printing with computer systems in 1996 used special paper which was lightweight, like typing paper.

The roadblocks put up by the police to avoid getting access to the computer file of the affidavit for search warrant to see the date and time it was completed infers that the police were hiding this information because it would support Sadlowskis' allegations that the affidavit was completed after the search was performed.

Detective Siciliano could have easily finalized the affidavit for search warrant after returning to the police station from the search and then meeting with Assistant Clerk Magistrate Raymond Salmon Jr. prior to the close of the office on Friday, August 23, 1996. It is known from another

document, that Assistant Clerk Magistrate Raymond Salmon Jr. signed a document at 6:00 P.M. on August 23, 1996.

During discovery, the Sadlowskis filed a Motion to have Fingerprint Analysis Performed on Search Warrant on file at Leominster District Court; the motion was denied. Sadlowskis filed a Motion to Compel Detective Benoit to take a lie detector test; the motion was denied.

In another instance that shows prejudice against the Sadlowskis, the Opinion of the case at the U.S. Court of Appeals for the First Circuit has been removed from the Opinions in the database at the U.S. Court of Appeals for the First Circuit. Michael Sadlowski accessed the web site for the First Circuit and did a lookup in the database of opinions on March 21, 2006 and the Opinion 02-1365.01A could not be found. Yet, due to internet search firms who retrieve copies and store them, a lookup of Michael Sadlowski shows the Opinion 02-1365.01A. It is improper for the Court of Appeals to remove the opinion in Sadlowskis case. There are other opinions in the database that are shown as not for publication in West's Reporter that are in the database at the First Circuit.

Article from Sentinel & Enterprise newspaper

April 14, 2004

Man acquitted after lawyer suggests that police planted drugs

By Matt O'Brien
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FITCHBURG: A jury acquitted a Fitchburg man on drug charges Tuesday after the man's lawyer accused police of planting the drugs on him.

Police arrested Luis Almonte, 31, outside the Searstown Mall in Leominster in August and charged him with possession of cocaine and heroin.

A group of plainclothes police detectives from the North Worcester County Drug Task Force exited a van and arrested Almonte after they say he tried to evade them.

"Why is it that the only person who says Mr. Almonte had any drugs on him was (Leominster police) Det. (Joseph) Siciliano?," asked Fitchburg attorney John A. Bosk as he addressed a six-person jury in closing arguments. 'Ask yourself, why is it nobody else saw it, except for that one person?"

Police say they found a small amount of heroin in Almonte's pocket and cocaine a few feet away. Police believe he swallowed the rest of the drugs after spotting police, said Assistant District Attorney Matthew Mullaney.

The drugs seized from Almonte's pocket and the ground were later sent to a crime lab for analysis and tested positive.

Bosk speculated that Siciliano who routinely makes drug arrests, "may set (some of the drugs) aside, from time to time, for his informants."

Siciliano left the court after his testimony and was unavailable to respond to the lawyer's comments.

Almonte remains held in jail following his acquittal because he still faces a pending drug case involving more serious trafficking charges in Worcester Superior Court.

Police in Fitchburg referred to Almonte as a major drug trafficker when they arrested him again in December with what they said were large amounts of cocaine and heroin.

Bosk who said Almonte testified in Spanish, had "reasonable fear" to evade police in August because the detectives were not dressed in their uniforms.

"They were big guys. They all had guns. They were in plainclothes," Bosk said.

Mullaney said police had badges on and all the evidence pointed to Almonte having the illicit drugs on him.

"If you believe that (police) planted evidence on Mr. Almonte, then you find him not guilty," Mullaney said.

The jury took less than an hour to arrive at their decision to exonerate Almonte.

CONCLUSION

Due to the blatant perjury to a jury by Detective Siciliano, there is grave doubt as to the reliability of any of his inputs in the affidavit that he created for the search warrant. There were and are major issues with the affidavit. The Sadlowskis would like to depose the informant, referred to as Confidential Reliable Informant, who was not named, that Detective Siciliano supposedly used as the critical component to justify his affidavit for the application of search warrant for the Sadlowski residence.

The United States Court of Appeals for the First Circuit was wrong to twist around words from Sadlowskis' opposition and use the twisted words to dismiss Sadlowskis' complaint of Fourth Amendment violations.

In the deposition of Detective Benoit, he was unable to identify any other police officer who could verify the actual search warrant that he had shown at the Sadlowski residence.

The Sadlowskis move the Honorable Court to grant their Petition for Certiorari so that the dismissal by the U.S. Court of Appeals for the First Circuit is reversed.

CERTIFICATE

This certificate is that the grounds identified in the petition for rehearing are in good faith and without delay. Intervening grounds and other substantial grounds not previously presented are in this petition for rehearing.

Respectfully submitted,

Michael Sadlowski

Jocelyn Sadlowski

Jocelyn Sadlowski